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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ESTRELLA COSTALES,

12 Plaintiff,

13 v.

14 AMERICA'S SERVICING CO., LOAN  
15 CENTER CALIFORNIA, *et al.*,

16 Defendants.

Civil No. 08cv1079-L(JMA)

**ORDER DENYING MOTION FOR  
EX PARTE TEMPORARY  
RESTRAINING ORDER**

17 On June 18, 2008, Plaintiff Estrella Costales, proceeding *pro se*, filed a complaint  
18 pursuant to the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.* and a Motion for Ex  
19 parte Temporary Restraining Order, seeking an order to enjoin a foreclosure. Pursuant to 28  
20 U.S.C. § 1331, the court has subject matter jurisdiction over the case, because the action arises  
21 under TILA, a federal statute. For the reasons which follow, Plaintiff's motion for a temporary  
22 restraining order ("TRO") is **DENIED**.

23 A party seeking preliminary injunctive relief, including a TRO, must show either (1) a  
24 combination of probable success on the merits and the possibility of irreparable harm, or (2) that  
25 serious questions going to the merits are raised and the balance of hardships tips sharply in the  
26 moving party's favor. *Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1119 (9th Cir.  
27 1999). "These two formulations represent two points on a sliding scale in which the required  
28 degree of irreparable harm increases as the probability of success decreases." *Roe v. Anderson*,

1 134 F.3d 1400, 1402 (9th Cir. 1998). Furthermore, the moving party must show the threatened  
2 irreparable harm is imminent. *Sardi's Rest. Corp. v. Sardi*, 755 F.2d 719, 725 (9th Cir. 1985);  
3 *Caribbean Marine Servs., Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988).


4 Although Plaintiff asserts she wishes to enjoin a foreclosure, she does not state when the  
5 foreclosure is to take place or attach any notices or correspondence pertaining to the foreclosure.  
6 With respect to the irreparable harm element, it is not clear whether the property to be foreclosed  
7 upon is Plaintiff's primary residence. Plaintiff's motion also does not include a memorandum of  
8 points and authorities, *see* Civil Local Rule 7.1(f)(1), or any other discussion of the applicable  
9 law to enable the court to determine the probability she will succeed on the merits or whether  
10 she has raised serious questions going to the merits of the dispute.

11 In addition to the substantive deficiencies, the motion suffers from procedural  
12 deficiencies. The motion is not signed. Federal Rule of Civil Procedure 11(a) requires every  
13 motion to be signed by the attorney or party proceeding *pro se*. Furthermore, Federal Rule of  
14 Civil Procedure 65(b) generally requires notice to the adverse party. Plaintiff's certificate of  
15 service does not state the manner of service, and is therefore insufficient to show that service  
16 was made as required by Rule 5(b). Plaintiff's motion does not meet the requirements of Rule  
17 65(b)(1) for issuing a TRO without notice.

18 For the foregoing reasons, Plaintiff's motion for a TRO is **DENIED**. If Plaintiff wishes  
19 to renew her motion, she must remedy the deficiencies noted above.

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21 **IT IS SO ORDERED.**

22  
23 DATED: June 19, 2008

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25   
M. James Lorenz  
United States District Court Judge

26 COPY TO:

27 HON. JAN M. ADLER  
UNITED STATES MAGISTRATE JUDGE

28 ALL PARTIES/COUNSEL